

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Woblog
RC-I
30936

FILE: B-217257

DATE: April 9, 1985

MATTER OF: Warren Management, Inc.

DIGEST:

Award on the basis of initial proposals to offeror who submits proposal which contracting officer concludes is technically superior but which is not lowest cost offer is proper where evaluation of proposals and award is consistent with award selection criteria contained in RFP, it can be demonstrated clearly from the existence of adequate competition that acceptance of the most favorable proposal would result in a fair and reasonable price, and the solicitation advises offerors that award may be made without discussions.

Warren Management, Inc. (Warren), protests the award of an incentive price revision-firm target contract for the operation and maintenance of the Yazoo headwater project to R&D Maintenance Service, Inc. (R&D), under request for proposals (RFP) No. DACW38-84-R-0052, issued by the Army Corps of Engineers (Corps).

Warren, the alleged low cost offeror, objects to the award to R&D at a higher cost to the government. Warren also contends it offered a more advantageous sharing formula for allocation of cost underruns (where the contractor performs the work at less than its projected cost) and cost overruns (where the contractor exceeds its projected cost). Warren also challenges the Corp's apparent determination that R&D was evaluated as superior with regard to personnel. Finally, Warren objects to the award to R&D an Oklahoma based company, as detrimental to local business interests in the area of Mississippi where this project is located and argues that the Corps should have given preference to a local Mississippi corporation such as Warren in awarding the contract. Warren also points out that it had the ability to perform the work as indicated by the performance bond submitted by the company with its proposal as required by the RFP.

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We deny the protest.

The Corps issued the RFP on November 2, 1984. Four offerors responded. The RFP provided evaluation criteria for review of initial proposals. The criteria were listed in descending order of importance as follows: (1) understanding of the requirement and proposed method of operation, (2) related experience in operation of similar facilities, (3) cost, (4) equipment, (5) manpower resources and utilization of personnel and equipment, (6) mobilization (phase-in plan), and (7) operation and management policies and procedures. Under this evaluation scheme, cost was approximately 20 percent versus 80 percent for technical factors. The RFP also advised that, if an offer submitted was, in the contracting officer's opinion, "clearly and substantially more advantageous to the government than any other proposal, . . . award could be made on the basis of the initial offer without discussion." The RFP also stated that award would be made to the highest evaluated offer.

R&D was the highest scored offeror based on the technical and cost evaluation. The contracting officer determined that R&D's award was clearly the most advantageous to the government and awarded the contract to R&D on the basis of initial proposals without conducting any discussions.

Warren was advised that it was scored lower than R&D on total points, and that its proposed cost was third low. It was also important that, with regard to technical factors, Warren scored lower than the awardee on related experience, equipment, manpower resources, and operations and management policies, and that, although Warren's proposed price was lower than the successful offeror's price, the cost advantage was not sufficient to compensate for the difference in the technical proposals.

Initially, we note that the method of selection for award clearly indicated that award would not be made on the basis of the lowest-priced offer. Thus, to the extent Warren is protesting that the selection method was improper because price was not considered as the most important factor, the protest is untimely. This allegation concerns an alleged solicitation impropriety apparent from the face of the solicitation which, under our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1984), should have been protested before the closing date for receipt of initial proposals.

With regard to the award to R&D on the basis of its higher priced proposal, Warren alleges its cost proposal was 24 percent lower than R&D's or \$847,022 over 3 years. The Corps points out that the R&D price Warren quotes includes costs for reimbursable funds and small tools and equipment which Warren is also liable for and which Warren should have included in its price for an accurate comparison. Thus, the Corps states that R&D's cost exceeds Warren's by \$359,432 for the 3 years or approximately 9 percent.

Also, the Corps points out that, when it compared the allocation formulas for cost underruns, R&D proposed a sharing formula more favorable to the government than Warren offered. The agency also reports that, with regard to overruns, although Warren's formula was more favorable to the government than R&D's because it offered to absorb all overruns, Warren's ceiling price (the highest cost for which the government is contractually obligated) and target price (the offeror's projected lowest achievable cost) are the same, thus, the government would receive no benefit under the cost sharing formula.

Warren has not disputed the Corps findings in regard to either the cost comparison or the evaluation of Warren's cost sharing offer.

In negotiated procurements, selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with established evaluation factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 C.P.D. ¶ 325. The judgment of the procuring agency concerning the significance or differences in the technical merit of offerors is accorded great weight. Thus, we consistently have upheld award to technically superior, higher cost offerors so long as that result is consistent with the evaluation criteria, and the procuring agency has determined that the technical difference is sufficiently significant to outweigh the cost difference. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 C.P.D. ¶ 607; Asset Inc., B-207045, Feb. 14, 1983, 83-1 C.P.D. ¶ 150.

An award may be made on the basis of initial proposals without discussions where it can be demonstrated clearly

from the existence of adequate competition that acceptance of the most favorable initial proposal without discussions would result in a fair and reasonable price provided that the solicitation advises offerors of the possibility that award might be made without discussions and provided that award is in fact made without discussions.^{1/} Emerson Electric Co., B-213382, Feb. 23, 1984, 84-1 C.P.D. ¶ 233.

Furthermore, we have not objected to awards to other than the lowest priced offeror on the basis of initial offers where permitted under the RFP. See, for example, Frank E. Basil, Inc.; Jet Services, Inc., B-208133, Jan. 25, 1983, 83-1 C.P.D. ¶ 91; Shapell Government Housing, Inc., 55 Comp. Gen. 839 (1976), 76-1 C.P.D. ¶ 161.

Here, award to a higher cost, technically superior offeror is clearly consistent with the RFP's evaluation criteria which indicated that technical factors would be given greater weight than cost. The listing of cost as the third most important of seven factors indicated cost could not represent more than approximately 20 percent of the points allotted and thus technical factors would be worth 80 percent of the total points. Based on the technical evaluation team report, the contracting officer concluded that there was a clear and evident break between R&D and the unsuccessful offerors, and that R&D's technical score was substantially higher than the other scores which were all within the same relative range. Furthermore, the contracting officer found that, although R&D did not receive the highest marks for cost, R&D's overall technical and cost proposal was still rated the best. The contracting officer concluded that R&D's was the best evaluated offer and that since cost was only worth approximately 20 percent, R&D's technical superiority justified award to R&D.

The RFP notified offerors that award might be made on the basis of initial proposals without discussions. The agency records show that, although R&D's price was the

^{1/} This procurement preceded the Competition in Contracting Act of 1984 (CICA), Pub. L. No. 98-369, 98 Stat. 1175, July 18, 1984. Section 303B(d)(1)(B) of CICA spells out the requirements for award on the basis of initial proposals under CICA.

highest offer, it was in line with the government estimate. Also, as noted above, R&D's proposal was determined to be the best evaluated offer under the RFP evaluation method and the contracting officer reasonably determined the higher cost was justified based on the technical superiority of R&D's proposal. In these circumstances, the decision to award to R&D was not unreasonable.

Warren's only objection to the technical evaluation is its contention that, since it listed the same two foremen of three required foremen in its proposal that were listed by R&D, it should not have received any less points concerning personnel.

On the basis of raw scores, Warren was scored 3 points lower in the category of manpower resources and utilization of personnel equipment which covers personnel. We will question an agency's determination concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion or violation of procurement statutes or regulations. Bank Street College of Education, supra. The protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 C.P.D. ¶ 448. The fact that the protester does not agree with the agency's evaluation of its proposal does not itself render the evaluation unreasonable. Frank E. Basil, Inc.; Jets Services, Inc., B-208133, supra.

Since the evaluation of this factor encompassed more than the evaluation of the required foremen offered by companies, the scoring would not necessarily be the same merely because the awardee and Warren used some of the same personnel.

Finally, there is no merit to Warren's allegation that the Corps should not have awarded to an Oklahoma firm. There is no legal authority for granting a preference to a local firm or restricting competition to local firms in the absence of a properly justified provision in the RFP. Cf. Olson and Associates Engineering, Inc., B-215742, July 30, 1984, 84-2 C.P.D. 129. There was no such provision in the RFP here. If Warren believed such a provision should have

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been included in the RFP, it was required to protest this omission prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1).

The protest is denied.

for *Harry R. Van Cleve*
Harry R. Van Cleve
General Counsel

General

[Scribbled signature] *Electric*